

In the Supreme Court of the United States

October Term, 1949

No. 13, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF TEXAS

MEMORANDUM IN OPPOSITION TO MOTION FOR ORDER TO TAKE ORAL DEPOSITIONS

The State of Texas has presented to the Court a motion for an order granting leave to take the oral depositions of five persons. It is proposed that the testimony of one of these persons be taken at Hunt, Texas, on December 2, 1949, and that of the remaining four at Beaumont, Texas, on December 5, 1949. It is stated that the age and physical condition of some of these witnesses make it necessary that their depositions be taken immediately in order that their testimony may be preserved.

The United States is strongly opposed to the granting of this motion. The motion appears to be subsidiary to the main effort which Texas is making to have a master appointed for the purpose of taking testimony in connection with the

resolution of the basic issues in this litigation. The United States is simultaneously filing a Motion for Judgment and is asking that the case be set for argument. If the Court agrees that the case should be argued on the pleadings, as was done in *United States v. California*, 332 U. S. 19, there is no basis whatever for the depositions sought to be taken.

The motion for these depositions seems to be nothing more than an indirect attempt to maneuver the Court into taking action looking forward to a trial of the basic issues, with extended and unnecessary hearings, that can serve only purposes of delay. In the absence of any showing that the proposed depositions are anything more than ancillary to the trial which Texas seeks before a master on the basic issues, the motion of the State should be denied. The case itself should be heard on the Motion for Judgment which is being filed by the United States, and we respectfully refer the Court to the statement which accompanies that Motion for a fuller explanation of our position that the basic issues in this case should be decided on the pleadings.

Respectfully submitted,

J. HOWARD MCGRATH,
Attorney General.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER 1949.